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OFFICE OF THE SECRETARY

ANGEL M. CARTAGENA, JR.
CHAIRMAN

January 9, 2003

Ms. Marlene H. Dortch
Commission Secretary
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, DC 20554

RE: WC 02-384, Consultative Report to the Federal Communications Communication from the Public Service Commission of the District of Columbia

Dear Ms. Dortch:

Pursuant to the Public Notice issued December 19, 2002, in the above-mentioned docket, the Public Service Commission of the District of Columbia hereby submits its Consultative Report regarding the application of Verizon Washington DC to provide in-region, interLATA service in the District of Columbia. As directed, enclosed are the required number of copies of the Consultative Report for the Office of Commission Secretary, Ms. Janice Myles, and Qualex International.

Please contact me if you have any questions regarding this filing at (202) 626-5118. Thank you for your consideration and attention.

Sincerely,

Angel M. Cartagena, Jr. /DLF

Angel M. Cartagena, Jr.
Chairman

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Enclosures

Verizon Washington DC
271 Application
for the District of Columbia

Consultative Report to the
Federal Communications Commission
from the Public Service Commission
of the District of Columbia

January 9,2003

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I. Introduction

A. Procedural History

The provisions of Section 271(c)(1)(A) of the Communications Act of 1934, as amended ("Act"),' set forth threshold competition requirements for supporting regional Bell Operating Company ("BOC") entry into the in-region, InterLATA long distance market in a given state. The provisions of Section 271(c)(2)(B) establish a 14-point checklist that must be met before the FCC may allow such entry.[2] In addition to these specific requirements, the provisions of Section 271(d)(3)(C) impose the general requirement that such entry be in the public interest.' The provisions of Section 271(d) provide for the Public Service Commission of the District of Columbia's ('Commission'') ability to provide consultation to the FCC with respect to any company that has filed an application in the District of Columbia under Section 271 to provide in-region, interLATA service.[4]

In anticipation of such consultation, on July 12, 2002, Verizon Washington DC ("Verizon DC") filed its documentation for Commission consideration of its compliance with Section 271(c) of the Act.[5] The compliance filing consisted of six declarations:

- Marie C. Johns - A Declaration Regarding Local Competition;
- A Checklist Declaration;
- An OSS Declaration;
- A Measurements Declaration;
- PwC Attestation of OSS; and
- PwC Attestation of Billing.

Thereafter, on or about September 30, 2002, several parties filed responses to Verizon DC's compliance filing. Allegiance Telecom ***of*** the District of Columbia, Inc. ("Allegiance") filed the Affidavit of Doreen Best. The testimony of Valerie Evans and Michael Clancy was filed on behalf of Covad Communications Company ("Covad"). WorldCom, Inc. ("WorldCom") presented the Declaration of Sherry Lichtenberg. AT&T Communications of Washington, D.C. LLC ("AT&T") filed three declarations: the Competitive Checklist Declaration of E. Christopher

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1 **47 U.S.C.** § 271(c)(1)(A) **(2002)**

2 See47 **U.S.C.** § 271(c)(2)(B) **(2002).**

3 *See47* **U.S.C.** § 271(d)(3)(C) **(2002)**

4 *See* **47 U.S.C.** § 271(d) **(2002)**

5 *Formal Case* **No.** *1011,* **In** *the Matter of Verizon Washington DC, Inc.'s Compliance with the Conditions Established in Section 271 of the Federal Telecommunications* ***Act*** *of 1996,* **Letter to Sanford** M. **Speight, Esq., Acting Secretary of the Public Service Commission** of **the District of Columbia fro David A. Hill, Vice President** & **General Counsel** of **Verizon DC ("Verizon DC Letter") and Verizon Washington DC,** Inc.'s **271 Compliance Filing, filed** July **12,2002.**

Nurse and Robert Kirchberger, the State of Competition Declaration of Robert J. Kirchberger, and the OSS Declaration of E. Christopher Nurse. Dr. Lee Selwyn and Scott Lundquist presented testimony on behalf of the Office of the People's Counsel ("OPC"). The positions of each of these parties are discussed below in relation to the assertions made in Verizon DC's compliance filing.

Verizon DC filed responsive testimony on November 1, 2002. It consisted of three reply declarations: the OSS Reply Declaration, the Checklist Reply Declaration and the Measurements Reply Declaration.

Covad notified the Commission, by letter on November 5, 2002, of its withdrawal from the proceedings.[6] Hearings were held on November 19 and 20, 2002, in which Verizon DC, OPC, Allegiance, AT&T, and Worldcom participated. Verizon DC, OPC, AT&T, and WorldCom also filed briefs after the hearings.

B. Summary of Commission Recommendations

This Commission has undertaken a thorough and comprehensive examination of Verizon DC's compliance with the requirements under Section 271 that apply to Verizon DC's entry into the in-region, interLATA market. This examination included an opportunity for all interested parties to participate, to file comments and testimony, to cross-examine all witnesses, and to file post-hearing briefs. This Commission has also undertaken comprehensive examinations, in other recent proceedings, of unbundled network element ("UNE") prices, terms, and conditions (in Formal Case No. 962) and of can-ier-to-carrier ("C2C") performance metrics and a Performance Assurance Plan ("PAP") (in Formal Case No. 990). Those proceedings similarly allowed for broad participation and a thorough examination of the issues through extensive testimony, hearings, and briefings. This Commission also recognizes that Verizon's Operations Support Systems ("OSS") has been subjected on many occasions to formal testing in other states -- testing about which the FCC is no doubt already fully knowledgeable given the many Section 271 reviews it has performed in the wake of such testing.

This Commission finds that Verizon DC meets the conditions of Section 271(c)(1)(A) of the Act, in that competitors are providing services either exclusively or predominantly over their own facilities, to both residential and business customers. This Commission also finds that Verizon DC generally has met the checklist conditions set forth in Section 271(c)(2)(B), with certain reservations, which are discussed immediately below. The Commission has a series of concerns about a number of issues that the participants raised in this case. Because, with one exception, the Commission does not believe that these concerns are sufficiently grave as to merit a recommendation to reject Verizon DC's Section 271 application, the Commission intends to address these concerns in proceedings before the Commission. These concerns are as follows:

1. Checklist Item 2: UNE Pricing

[6] Covad withdrew before the hearings. No party adopted Covad's filing at the hearings for entry into the formal record, so there was no ability to cross-examine any witness regarding Covad's filing. Because Covad's filing is not in the formal record of this proceeding, the Commission does not discuss its arguments. See, 15 DCMR § 133.1, 133.6.

In Order No. 12610, released December 6, 2002, the Commission established UNE rates for the District of Columbia, replacing the proxy rates set in 1997. Verizon DC objects to the UNE rates established in Order No. 12610 and on January 3,2003, applied for reconsideration of the UNE rates.[7] By operation of District of Columbia law, the filing of a petition for reconsideration stays the order subject to the petition for reconsideration, unless the party seeking reconsideration requests that the stay be lifted.[8] Verizon DC has not requested that the stay be lifted. Thus, the UNE rates in effect before the issuance of Order No. 12610 are now in effect in the District of Columbia until an Order on Reconsideration is issued by this Commission.

In Verizon DC's Section 271 application, Verizon DC describes the situation created by District of Columbia law during the reconsideration period, but indicates that, in some circumstances, it will be offering other UNE rates benchmarked to New York UNE rates as UNE rates in the District of Columbia.[9] However, these New York-benchmarked rates have not been approved by this Commission. Under District of Columbia law, Verizon DC cannot offer rates that have not been approved by this Commission." Thus, Verizon DC cannot offer UNE rates in the District of Columbia until they have been approved by this Commission for the purposes of Verizon DC's Section 271 application. The District of Columbia's 1997 proxy rates were based on the FCC's proxy rates, which were invalidated in the Eighth Circuit Court of Appeals *Iowa Utilities Board* v. *FCC* decision." Thus, the UNE rates in place in the District of Columbia prior to the issuance of Order No. 12610 cannot be used to support a Section 271 application because they are based on proxy rates, not the total element long run incremental cost ("TELRIC") methodology. In place of most of the proxy rates, Verizon DC has proposed to offer to CLECs rates that Verizon DC alleges are TELRIC-compliant for incorporation into existing or new interconnection agreements. After a CLEC has accepted these terms, Verizon DC intends to seek approval of the interconnection agreement amendments from this Commission. Verizon DC believes that upon Commission approval of the interconnection agreement amendments, which would include these new rates, benchmarked to New York UNE rates, there would be TELRIC-compliant rates in the District of Columbia."

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7 ***Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Verizon Washington DC,** Inc.'s **Application for Partial Reconsideration and Clarification** of **Order** No. **12610 ("Verizon DC Reconsideration"), filed** January **3,2003.**

8 **D.C. Code, 2001 Ed.** § 34-604(b)

9 ***In the Matter of Application of Verizon Maryland, Inc., Verizon Washington DC, Inc., and Verizon West Virginia, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia,* Verizon Brief at 47.**

10 **D.C. Code, 2001 Ed.** § 34-601

11 ***Iawa Util. Bd. v. FCC,* 219 F.3d 744, 756 (2000).**

12 ***Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Verizon Washington** DC,

The Commission believes that Verizon DC's approach may be reasonable. However, Verizon DC has not yet submitted an amended interconnection agreement including these New York-benchmarked rates for review and approval by this Commission. If Verizon DC submits such an amended interconnection agreement, and the Commission subsequently approves it after a thorough review of the agreement, then there may be sufficient UNE rates in place for the Commission to believe that the Verizon DC satisfies this checklist item.

2. Checklist Item 4: Expanded Extended Loops ("EELs")

Verizon DC requires the CLECs to "turn up" (make live) the interoffice ("IOF") portion of an Expanded Extended Loops ("EEL") before the loop portion can be ordered. The second (loop) part of this sequence can sometimes take as long as 15 days to provision, but Verizon DC charges the CLECs for the IOF portion as soon as it is made live. We believe it is improper for the CLECs to bear the financial burden for lags between the ordering of EELs and the provision of their full functionality by Verizon DC. This problem can be solved simply by requiring that CLECs need not pay for the trunk portion until both it and the loop portion are provisioned, provided that both portions are ordered at the same time. This Commission is concerned over the absence of a Verizon DC policy providing that CLECs will not be required to pay for the IOF loop until the entire EEL has been provisioned, if both EEL portions are ordered together. However, the Commission determines that this issue is best addressed in another proceeding, where additional information can be collected to allow the Commission the opportunity to adopt an appropriate policy regarding this issue.

3. Checklist Item 4: Discontinuing Verizon Voice Service

WorldCom argues that it is discriminatory and anti-competitive for Verizon DC to decline to continue providing its own DSL service to a customer who switches to a CLEC for the voice portion of local exchange service. Verizon's policy constitutes a substantial bamer to the development of competition, This Commission has substantial concerns that the effect of this policy is anti-competitive and that the denial of data services is contrary to the policies of this Commission with respect to the retail services under its jurisdiction. Because the Commission needs more information on this subject, the Commission will undertake an investigation into this issue.

4. Checklist Item 5: Dark Fiber

AT&T asks that this Commission require Verizon DC to adopt the specific terms and conditions approved in the FCC's recent ***Virginia Arbitration Order,*** which addressed dark fiber issues, in Verizon DC's model interconnection agreement. This Commission believes that this issue requires further investigation, which will be conducted in a separate proceeding.

Inc.'s Response in Compliance **with** Order No. 12626 ("Verizon DC 12626 Response"), tiled January **7,** 2002; *Errata to Verizon Washington, DC Inc.'s* ***Response in*** *Compliance with Order* ***No.*** *12626,* tiled January 8,2003.

5. Checklist Item **8:** Directory Listings Verification

Verizon DC states that CLECs can verify the accuracy of directory listings by submitting pre-order queries of the OSS. While Verizon DC is entitled to charge for these queries, it does not do so at this time, pending a request to change the charge basis from a per-inquiry to a per-line basis, in order not to discourage CLECs from using pre-order queries. At this time, Verizon DC retains the option of imposing such a charge. The Commission believes that further inquiry is necessary to determine whether this option should be retained and will initiate an investigation into this issue in another proceeding.

6. **OSS:** Billing

Prior OSS testing in Verizon states has not included electronic billing, because Verizon has never designated an electronic version as the "bill of record" until after it could be included in OSS testing. Further, the record demonstrates that there have been accuracy problems arising under ExpressTRAK, which is still in its early period of application. Also, the recent elimination of accuracy measures from the District of Columbia Carrier-to-Carrier Guidelines Performance Standards and Reports ("C2C Guidelines or DC Guidelines") may cause a lack of sufficient incentives to cure any problems that may continue.

The Commission considers it appropriate to make special arrangements for examining billing developments, in the immediate post-Section 271 period, to assure that immediate post-entry performance continues to show adequate progress toward satisfaction of appropriate standards. The Commission determines that it should study the feasibility of early audits under the PAP, which would include the capability to examine whether billing operates accurately and effectively under the systems now in place.

7. OSS: Flow Through

The best way to analyze this issue is to determine whether the flow through measurements being reported: (a) inspire sufficient confidence as to their accuracy; (b) show a sufficiently improving trend in the recent past; and (c) are likely to show continued improvement into the future. The Commission finds it appropriate that focused post-Section 271 attention remain on this important issue, to assure that immediate post-entry performance continues to show adequate progress toward satisfaction of the applicable standards. The Commission believes that the feasibility of early audits under the PAP should be studied, to examine whether flow through performance is being affected by any system problems and generally to examine the underlying root causes of any problems, in the event that flow through performance in the District of Columbia does not come to match that being experienced in other Verizon jurisdictions.

8. Late or Inaccurate Performance Reports (Verizon Veto Over **PAP** Changes)

The Commission is concerned about Verizon DC's position that it must approve of any future PAP changes. The Commission has already partially addressed this issue in Formal Case

No. 990, in its Order adopting the PAP.[13] The Commission will continue to address these issues in the context of Formal Case No. 990.

The following sections of this report include a summary of Verizon DC's initial filings, a discussion of the issues raised by Competitive Local Exchange Carriers ("CLECs") and other parties, an analysis of the issues, and detailed explanations underlying each of the checklist exceptions listed above.

[13] Order No. 12451, ¶ **121-137**

11. Track A and The Public Interest – The Degree of Local Competition in the District

A. Verizon DC Declaration

The purpose of this declaration is to provide an overview of competition in the local exchange market in the District of Columbia. The declaration is based on an attached report (Attachment 101) that provides detailed information to support the summarized data contained in the declaration. Ms. Johns, President of Verizon DC, states that she "will demonstrate that the local market in Washington, DC is "irreversibly open."[14] She asserts that the Washington, D.C. local market is competitive, and that, as of April 30, 2002, more than 130 CLECs had been authorized to provide local exchange service in the District of Columbia. Verizon DC estimates that, of these, approximately 40 CLECs are currently providing service in the District of Columbia, and they serve at least 199,000 lines.[15]

According to Verizon DC, approximately 120 Commission-approved interconnection agreements exist. Of those, approximately 80 agreements cover facilities-based service and another 40 agreements cover service by resale.

Based primarily on E911 listings, Verizon DC estimates that competitors serve approximately 17 percent of the total local exchange market in Verizon DC's jurisdiction. Verizon DC estimates that CLECs serve 163,600 business lines using their own facilities, 2,500 business lines using the UNE Platform ("UNE-P") and approximately 8,300 business lines using resale. Verizon DC makes similar estimates for residential lines; of the approximately 25,000 residential lines served by CLECs, 17,500 of them are served on a facilities basis, with 20 using UNE-P, and 7,400 are resold.

Verizon DC maintains that the level of competitive activity increased over the 16 months preceding its principal filing in this proceeding. From 2000 to 2001, Verizon DC states, the average number of minutes of traffic exchanged with CLECs on a monthly basis has increased by more than 25 percent. In addition, from December 2000 to April 2002, the number of loops increased by more than 40 percent, the quantity of numbers ported increased by 90 percent, and the number of Verizon DC-provided UNE-Ps increased by over 550 percent."

Verizon DC also submits CLEC proprietary information for several individual carriers that provide facilities-based service. They are: Allegiance Telecom, AT&T Communications, Cavalier Telephone, PacTec Communications, Starpower, WorldCom, and XO Communications. These data show the number of business and residential lines for each carrier and whether service is provided on a facilities or resale basis.[17]

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14 Verizon DC Local Competition Declaration at ¶3.

15 Veriron DC Local Competition Declaration at ¶¶ 5-7.

16 Veriron DC Local Competition Declaration at ¶ 8.

17 Verizon DC Local Competition Declaration at ¶¶ 10-16.

Verizon DC also argues that this list is not exhaustive, citing the existence of about 25 local service resellers that serve 15,700 lines. Through April 2002, Verizon DC had provided 20,000 UNEs to approximately 15 different competitors and unbundled local switching to five different CLECs. According to Verizon DC, Starpower, Allegiance, Covad, and Qwest compete with Verizon DC in the data services market.

B. OPC

OPC addresses the issue of local competition in the context of the public interest standard." OPC characterizes the District of Columbia's telecommunications market as a "slowly emerging competitive telecommunications market,"" although virtually no residential competition has emerged." Dr. Selwyn, OPC's witness, considers Verizon DC's evidence to be "highly suspect," and he expresses concern that there are no assurances that even current competition is "economically viable or sustainable." He concludes by saying that market conditions in the District of Columbia fail to meet the U.S. Department of Justice's "requirement that the market be irreversibly open to competition.""

More specifically, OPC argues that Verizon DC's method for determining the extent of local competition is flawed. First, OPC contends that Verizon DC's reliance on the E911 database for a count of CLEC-served lines is misplaced; there is no information to prove that the manner by which Verizon DC enters numbers in this database is uniform, and Verizon DC's own E911 database entries exceed its access line count. OPC also states that Verizon DC's method of using the number of completed collocation arrangements to measure CLEC penetration has flaws.

OPC notes that a number of CLECs recently have failed, and it points to a decline in "in use" collocation arrangements. OPC argues that opportunities for CLEC expansion or growth have diminished, especially in light of incumbent local exchange carrier ("ILEC") mergers.[22] While the ILECs have claimed that these mergers will further the pro-competitive purposes of the Act, the result has been strengthened monopolies. OPC states that, "CLECs have become marginalized because they do not own the strategic assets necessary to compete and must instead rely upon the ubiquitous Bell network ..."[23] With so many CLECs filing or on the verge of filing for bankruptcy and facing continuing financial difficulties, there has been an overall economic downturn among the CLECs operating in the District of Columbia. OPC presents a table

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18 OPC **Selwyn at ¶¶ 11-25.**

19 OPC **Selwyn, Summary, p.** 2.

20 OPC **Selwyn, Summary, p.** 3.

21 OPC **Selwyn, Summary, pp. 4-5**

22 OPC **Selwyn at ¶¶ 26-33.**

21 OPC **Selwyn at ¶ 29.**

showing CLEC market capitalization in September 1999 and in September 2002. The table illustrates the drop in stock price and market capitalization over the past 36 months.[24] OPC concludes that there are serious risks to consumers and competitors if Verizon DC is permitted into the long distance market "... prior to the development of effective, price-constraining competition in the local market."[25]

C. AT&T

AT&T also presents testimony regarding the status of local competition in the District of Columbia, both for local exchange and long distance service.[26] AT&T questions whether the District of Columbia's local telecommunications market is irreversibly open. It argues that the local competition information presented by Verizon DC is overstated, particularly given the "shakeout" that has been occumng in the CLEC industry. AT&T notes that there are no CLEC collocation arrangements in several Verizon DC central offices. Furthermore, Verizon DC only lists seven CLECs that are major facilities-based competitors and some of these, such as WorldCom and XO Communications, have experienced financial difficulties that could jeopardize their ability to continue to operate or expand.[27]

AT&T contends that there is little competition in the residential market, which the lack of UNE-P use makes apparent; only 20 residential lines were served by UNE-P in April of 2002.[28] AT&T also notes that, of the three modes of entry available to CLECs, resale and UNEs account for only nine percent of the CLEC presence in the District of Columbia. The remainder is facilities-based competition. AT&T points out that Verizon DC only needs to interconnect and port numbers in the latter mode of entry; therefore, "...Verizon's showing here can hardly be considered conclusive proof that it has met its obligations under the Act to make resale and UNEs readily available to its CLEC competitors."[29] AT&T discounts Verizon DC's arguments that the large number of interconnection agreements and the reservation of some 700,000 telephone numbers by CLECs for future use constitute proof of local exchange competition. AT&T contends that neither point shows actual numbers in service.

D. Analysis and Conclusions

1. Background

Section 271(c)(1)(A) of the Act sets forth the requirements under Track A. This section provides:

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24 OPC Selwyn at ¶ 31.

25 OPC Selwyn at ¶ 34.

26 State of Competition Declaration of Robert J. Kirchherger on behalf of AT&T at ¶¶ 1-33

27 AT&T Competition Declaration at ¶ 5.

28 AT&T Competition Declaration at ¶ 6.

29 AT&T Competition Declaration at ¶ 8.

> *(A) PRESENCE OF A FACILITIES-BASED COMPETITOR. — A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 153(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.*

The FCC has applied four specific tests in interpreting this provision:[30]

- Whether the applicant has signed one or more binding agreements that have been approved under section 252;
- Whether the incumbent is providing access and interconnection to competing providers of local exchange service;
- Whether competing providers are providing local exchange service to residential and business customers; and
- Whether competing providers offer telephone exchange service exclusively over their own respective facilities or predominantly over their own telephone exchange service facilities in combination with resale.

CLEC market oenetration rates are also at issue here in the context of the public interest standard under Section 271(d)(3)(C) of the Act. This section requires a conclusion that Section 271 approval be "consistent with the public interest, convenience, and necessity." The FCC has said that compliance with the competitive checklist provides a strong indication that long distance entry is consistent with the public interest. Checklist compliance, however, is not fully conclusive as to the public interest requirement:

> In making our public interest assessment, we cannot conclude that compliance with the checklist alone is sufficient to open a BOC's local telecommunications market to competition. If we were to adopt such a conclusion, BOC entry into the in-region interLATA services market would always be consistent with the public interest requirement whenever a BOC has implemented the competitive checklist. Such an approach would effectively read the public interest requirement out of the statute, contrary to the plain language of Section 271, basic principles of statutory construction, and sound public policy.."

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30 Memorandum Opinion and Order, ***Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan***, 12 FCC Record 20543, 20577-99 (1997) (Michigan Order), ¶¶ 62-104.

31 Michigan Order at ¶389.

The FCC's SBC Kansas/Oklahoma Order[32] provides a discussion of the factors that are to be considered in addressing public interest:

> [W]e view the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore **serve** the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition.[33]

2. Existence **of** Interconnection Agreements

The FCC has stated that interconnection agreements approved under Section 252 of the Telecommunications Act are considered binding for purposes of Track **A,** even if they contain interim prices, most-favored-nation clauses, or fail to include every possible checklist item. The FCC held that, for agreements to be binding, it is sufficient that they "specify the rates, terms, and conditions under which [the BOC] will provide access and interconnection to its network facilities."[34]

Verizon DC presents evidence that 130 CLECs are authorized to provide local exchange service in the District of Columbia and that 40 of them are active. Verizon DC's evidence shows that it has in force 120 interconnection agreements, and 80 of them **are** facilities-based.[35] No party seriously contests this evidence; however, a number of parties believe that there has been a reduction in CLEC activity in the recent past. Even with a reduced number of CLECs operating in the District of Columbia, the evidence demonstrates conclusively that Verizon DC has met the Section 271(c)(1)(A) requirement that requires it to have signed one or more binding agreements that have been approved under Section 252.

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[32] Memorandum Opinion **and** Order, ***Joint Application** by **SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc., d/b/a Southwestern Bell Long Distance for** Provision of In-Region InterLATA **Services in Kansas and Oklahoma,*** CC Docket No. 0-217(Released January 22,2001) ("SBC Kansas/Oklahoma Order").

[33] SBC Kansas/Oklahoma Order at ¶ 272- 273.

[34] Ameritech Michigan **Order** at paragraphs 72 and 73.

[35] Verizon DC Local Competition Declaration, **p.** 3.

3. Provision of Access and Interconnection

Verizon DC offers evidence that it is providing access and interconnection at substantial levels. As of the end of April 2002, Verizon DC states that it was providing approximately 80,000 interconnection trunks to approximately 20 competitors in the District of Columbia and that it had exchanged a total of 2.3 billion minutes with competitors in the first four months of this year.[36] According to Verizon DC, it also was providing a total of approximately 20,000 unbundled loops to approximately 15 competitors, and was providing its competitors with approximately 2,500 unbundled switch line ports as part of UNE-P and approximately 70 unbundled dedicated local transport facilities.[37]

The Section 271(c)(1)(A) requirement that Verizon DC provide access and interconnection to unaffiliated competing providers of telephone exchange service imposes no volume number or market penetration requirements.[38] Verizon DC's evidence demonstrates that it meets the requirement that it provides access and interconnection to unaffiliated competing providers of telephone exchange service.

4. Existence of Competing Residential and Business Service Suppliers

This element of the Track A test addresses whether CLECs are actually providing telephone exchange services to residential and to business customers. The FCC has held that there need not be a single CLEC that serves both residential and business customers. The test is whether collectively the CLECs in the state serve both customer types.[39] The Ameritech Michigan Order has made it clear that this element of the test is satisfied where a competing carrier is serving more than a ***de minimis*** number of end users. The FCC has not provided a quantitative indication of what would constitute more than a ***de minimis*** number. It had no need to address that question in the ***Michigan Order,*** because Michigan had **"three** operational carriers, each is serving thousands of access lines in its service area."[40] The recent FCC Verizon Connecticut Section 271 Order does, however, suggest that the number of end users served by

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36 Verizon DC Local Competition Declaration, Attachment 101, p. **4**

37 Verizon DC Local Competition Declaration, Attachment 101, p. *5*.

38 ***Application*** of ***Ameritech Michigan Pursuant to Section 271 of the Communications Act of*** *1934, as* ***amended,*** *to* ***Provide In-Region InterLATA Services in Michigan,*** Memorandum Opinion and Order, 12 FCC Rcd 20543, 20584, ¶ **76** (1997) (satisfaction of the Section 271(c)(1)(A) requirement does not require any demonstration of geographic penetration); ***Application by Verizon New Jersey*** *Inc., Bell* ***Atlantic Communications, Inc.*** *(b/b/a* ***Verizon*** *Long* ***Distance). NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global*** *Networks Inc.,* ***and Verizon Select Services*** *Inc.* ***for Authorization*** *to* ***Provide In-Region,*** *InterLATA* ***Services in New Jersey,*** Memorandum Opinion and Order at 85, ¶ 168, n. **516** (satisfaction of the Section 271(d)(3)(C) requirement does not require any demonstration of geographic competition).

39 Michigan Order at ¶ 82.

40 Michigan Order at ¶ 78.

CLECs can be material to addressing the satisfaction of Track **A** requirements. In deciding that this aspect of the Track **A** standard was met, the FCC said?'

> Our comparison of the record in the Kansas/Oklahoma application and the record in this proceeding indicates that residential customers served by competitive LECs on a facilities basis represents a somewhat greater proportion of all Verizon access lines in Connecticut than was the case for Southwestern Bell in Kansas.

The SBC Kansas/Oklahoma Order cited BOC estimates that competitors served between 9.0 and 12.6 percent of total Kansas service-area access lines and between ***5.5*** and 9.0 percent of all Oklahoma service-territory access lines.[42] In contrast, Verizon DC's evidence in this proceeding indicates that CLECs are serving 16,300 business customers with their own facilities, **2,500** with UNE-Ps acquired from Verizon DC, and 8,300 through resale. The Company's evidence further indicates that CLECs are serving 17,500 residential customers through their own facilities, 20 through WE-Ps, and **7,400** through resale.

No participant presents evidence that would substantially challenge the overall levels of CLEC market penetration claimed by Verizon DC. However, they raise a number of specific challenges:

- Is it appropriate to rely on the E911 database as a method for counting the number of CLEC-served lines? Does relying on this information overstate the numbers?[43]
- Is it appropriate to measure the CLEC penetration in DC by counting the number of completed collocation arrangements?[44]
- Given the lack of local competition, the continuing difficult economic situation for CLECs, and the disappearance of opportunities for CLEC expansion due to ILEC mergers, is it appropriate to grant Verizon Section **271** authority?[45]
- Can the District of Columbia market be found to be irreversibly open to competition given the lack of WE-Platform and resale service and the predominance of facilities-based competition?[46]

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41 **Memorandum Opinion and Order,** ***Application of Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Connecticut,*** **CC Docket** No. 01-100 **(Released July 20,** 2001) **(Verizon Connecticut Order), at ¶ 71.**

42 **SBC** Kansas/Oklahoma **Order at 774 and 5**

43 OPC Selwyn at ¶¶ **11-21.**

44 OPC **Selwyn at ¶¶ 22-25**

45 **OPC Selwyn at** ¶¶ 25-34.

46 AT&T **Competition Declaration, p. 4.**

- Does the decline in the number of collocation arrangements in the District of Columbia (from Verizon DC data request responses) similarly indicate that the District of Columbia market is not open to competition?[47]

AT&T also denies Verizon DC's claim that AT&T is serving residential customers in the District of Columbia.[48]

These challenges do not contradict Verizon DC's market penetration evidence. First, it must be noted that it is necessary for Verizon DC to estimate CLEC market share, particularly in cases where CLECs take no facilities from Verizon DC, but only interconnect with them. The OPC challenge to the use of the E911 database does not present more than a marginal concern about the accuracy of the database information.[49] The OPC evidence shows a mismatch between Verizon DC line counts and E911 database entries, but not at a level that completely undermines the value of the latter. Second, the number of collocation arrangements was not the sole source of Verizon DC's estimation; were the Commission to wholly ignore it, the record still shows substantial numbers of CLEC customers. The same is true of AT&T's denial that it serves residential customers in the District of Columbia. Even if it does not, the total number of residential customers that CLECs serve is not substantially reduced. As Verizon notes in its post hearing brief, "In the end, whether the E911 database overstates or understates the amount of CLEC competition is academic since, as all parties concede, the amount of competition in the District of Columbia satisfies Verizon DC's statutory obligation."[50]

OPC states that the Commission should first find the presence of effective, widespread competition on the local exchange market in order to mitigate Verizon DC's ability to engage in anticompetitive conduct.[51] This, however, is not the standard set forth in the Act, and OPC has cited no authority for imposing such a requirement.

The general market decline cited by OPC is also not a proper factor for consideration in a Section 271 proceeding. The basis for this decline in relation to matters properly at issue in Section 271 applications is speculative and the OPC witness fails to provide sufficient quantitative analysis from which to gauge its significance. Moreover, OPC's evidence fails to tie concerns about general market conditions for CLECs to any behavior by Verizon DC that fails to meet checklist requirements or is otherwise anticompetitive. Despite the substantial public discussion about CLEC financial conditions, and their purported affect on local competition, the record in this case is devoid of the evidence necessary to permit the Commission to opine about their root causes or to tie them to the specific requirements that must be considered regarding

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47 AT&T Competition Declaration, p. 7.

48 ***AT&T Response to Verizon Claims That AT&T Presently Serves Residential Customers in the District of Columbia,*** November 22,2002 (tiled **by** agreement after the hearings in this proceeding).

49 OPC Post Hearing Brief, pp. 8-9.

50 Verizon DC Post Hearing Brief, p.58.

51 OPC Post Hearing Brief, p. *7*

Verizon DC's application to provide long distance service in the District of Columbia. Finally, and perhaps most persuasively, the level of competition in the District of Columbia is substantial when compared to what the FCC has found sufficient in other states.[52]

The FCC has granted Section 271 approval in many states, and particularly so in the Verizon footprint. Given that history, it would not be appropriate here to seek to redefine the test that the FCC has uniformly applied to this element of the Track A standard. The FCC does not impose a market share test and it has deemed Track A to be satisfied at very low CLEC levels of penetration into the residential market. At the demonstrated levels of penetration in the District of Columbia, it is clear that Verizon DC has met this portion of the applicable test. Finally, it is worth noting that, despite their raising of concerns about Verizon DC's methods for quantifying CLEC market penetration, no other party here has responded with its own estimate. The burden of proof is on Verizon DC. Had Verizon DC not presented substantial evidence of the existence of required competition, perhaps the evidence on which the CLECs and OPC rely would have proven more persuasive. However, Verizon DC did make such a showing, and it did so with evidence of the type that the FCC has found persuasive on prior occasions.

5. Existence of Facilities-Based Competitors

The last of the four key elements of the FCC test is whether competing telephone exchange service is provided: (a) exclusively over CLEC telephone facilities; or (b) predominantly over such facilities in combination with the resale of the telecommunications services of another carrier. The FCC has held that a CLEC's "own" facilities include UNEs that it leases from the incumbent provider.[53] Verizon DC's evidence demonstrates the provision of significant levels of CLEC services exclusively over the CLEC's own facilities. It also shows that considerable services are being provided over facilities that Verizon DC provides to CLECs.

6. Existing Long Distance Competition

AT&T states that there is already substantial competition in the long distance market, and the "benefits" Verizon claims its entrance into that market will bring do not actually provide anything new to District of Columbia consumers.[54] To bolster its claims of added benefits, Verizon relies on studies performed by the Telecommunications Research Action Center ("TRAC"), which, AT&T claims, is closely affiliated with Verizon and other Regional Bell Operating Companies ("RBOCs"). AT&T states that the TRAC studies are highly suspect because of this affiliation and because the methods used were flawed.[55]

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[52] See, for example, the *SBC Kansas/Oklahoma* ***Order*** and the recent FCC **Memorandum Opinion and** Order addressing Qwest 271 authority in a number of states: In the *Matter* ***of*** Application ***by*** *Qwest* Communications International, Inc. for Authorization ***To*** Provide In–Region, *InterLATA* Services in the *States* of *Colorado,* Idaho, Iowa, Montana, *Nebraska, North Dakota,* Utah, Washington and Wyoming, **WC** Docket No. 02 **– 314 (Released** December **23, 2002).**

[53] Michigan Order at ¶ 99.

[54] AT&T Competition Declaration at ¶¶16-17.

[55] AT&T Competition Declaration of at ¶ 19

AT&T argues that Verizon DC's entry into the long distance market could harm long-distance competition. Verizon's ability to jointly market local and long distance service will give Verizon the ability to extend its local monopoly into the long distance market. AT&T states that, "the larger the RBOC's local service market share the greater will be its opportunity to preemptively market its affiliate's long distance service."[56]

AT&T urges this Commission to consider its position that there is currently sufficient long distance competition in the District of Columbia and that Verizon DC's entry into the long distance market therefore will not benefit District of Columbia consumers. This argument would effectively add another test to the Section 271 requirements that Congress has established. Moreover, it would second guess the decision implicit in Congress's passage of the Telecommunications Act of 1996. That statute makes it clear that national policy is to promote competition in both the local exchange and the long distance markets. It does so by creating an explicit bargain, under which an ILEC that opens its local market to competition receives, in exchange, entry into the interLATA market. We may presume that there is vibrant long distance competition in states where the FCC has granted an ILEC Section 271 approval, without giving weight to arguments like those made by AT&T here. Whether the time is ripe for a reconsideration of federal policy is not before this Commission at the present time. What is at issue is whether the test that AT&T proffers may be read into federal law. It is clear from the federal Act and FCC decisions interpreting it that it may not.

The Commission concludes that Verizon DC meets the in-region, interLATA entry conditions of Section 271(c)(1)(A), because the evidence in this proceeding demonstrates that competitors are providing services either exclusively or predominantly over their own facilities, to both residential and business customers. The Commission also concludes that nothing about the nature or extent of the local competition existing in the District of Columbia causes us to find that approval of Verizon DC's application would contravene the public interest standard **of** Section 271(d)(3)(C) as the FCC has applied that standard heretofore.

56 AT&T Competition Declaration **at ¶ 31**

III. Checklist Item 1: Interconnection and Collocation

A. Verizon DC Declaration[57]

1. General

Verizon DC states that it meets each of the requirements of Section 271(c)(2)(B)(i) of the Telecommunications Act and the *Local Competition Order*.[58] Specifically, Verizon DC makes available: (1) line-side interconnection of the local switch; (2) trunk-side interconnection of the local switch; *(3)* trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points necessary to exchange traffic at these points and to access call-related databases; and (6) the points of access to UNEs. Verizon DC also provides access to customer local signaling services ("CLASS") services, two types of interconnection for CLECs to access Verizon DC's signaling transfer point ("STP") through Access Link and Digital Link, nondiscriminatory access to databases (800, line information data base, local number portability, and advanced intelligent network), and trunking access to 911, directory assistance ("DA"), and operator services ("OPS"). Verizon DC has provided more than 600 trunks to facilities-based CLECs for DA and OPS. In addition, Verizon DC has made available interconnection through two-way measured trunks, the traditional 56Kbps trunks, and optional 64 Kbps Clear Channel trunks.[59]

2. CLEC Trunk Numbers

At the end of April 2002, Verizon DC served more than 20 CLECs with about 26,800 direct end-office trunks in service and about 51,400 tandem trunks in service. For the months of January through April 2002, Verizon DC exchanged 570 million minutes on average with CLECs.[60] Verizon DC offers trunk provisioning in three categories (with forecasts, 18 and 30-day intervals and a negotiated interval without forecasts, 45 and 198-day intervals and a negotiated interval) on the basis of the forecasts from CLECs.[61] Verizon DC provides maintenance and repair for CLECs on a nondiscriminatory basis, which it says is evidenced in metric MR-2-01 of the C2C or DC Guidelines.[62] Verizon DC states that trunk blocking is not an issue and that the average utilization rate for the three months ending April 2002 for CLECs was

57 This declaration, sponsored by numerous witnesses, is offered to demonstrate that Verizon DC has complied with the 14-point competitive checklist in Section 271(c)(2)(B). Verizon DC points out that the Veriron states of Pennsylvania, Massachusetts, New York, Connecticut, Rhode Island, Vermont, Maine, and New Jersey, as well as the FCC, have all verified Verizon's compliance with the competitive checklist.

58 Veriron DC Checklist Declaration at ¶¶ 24-29.

59 Veriron DC Checklist Declaration at ¶¶ 32-35.

60 Verizon DC Checklist Declaration at ¶ 38.

61 Verizon DC Checklist Declaration at ¶¶ 41-43

62 ***See, Formal Case** No. 990, **In the Matter of Development of Local Exchange Carrier Qualify of Service Standards for the** District*, Order No. 12230, Attachment 1, rel. November 9, 2001.

43.1 percent, compared to Verizon DC's rate of 54.3 percent, indicating better service as evidenced by a lesser chance of blocking provided to CLECs than to its own customers.[63]

3. Collocation

Verizon DC offers the same collocation arrangements in the District of Columbia as other Verizon affiliates do in Pennsylvania, Massachusetts, New Jersey, and New York.[64] For physical collocation, Verizon DC offers Traditional Caged Collocation, Secure Collocation Open Physical Environment ("SCOPE") for single bay requests, Cageless Collocation Open Environment ("CCOE')),and Virtual Collocation. Verizon DC also offers collocation alternatives where space is not available. Such alternatives include Shared Collocation, which permits a CLEC to host another CLEC; Adjacent Structure Collocation with access to its central office through its Competitive Alternative Transport Terminal service; and Collocation at Remote Terminal Equipment Enclosures ("CRTEE"). Through April 2002, Verizon DC had provisioned 242 collocation augments to 41 CLECs, with five augments pending. For the months of February 2002 to April 2002, Verizon DC states that it met the intervals required by the C2C Guidelines for each of its collocation offerings.[65]

Verizon DC asserts that it proactively optimizes collocation space in all 14 of its central offices. It provides website access, provides tours, and files central office exhaustion notifications when necessary. Verizon DC avers that it has implemented comprehensive collocation methods and procedures to include joint testing with CLECs with Collocation Acceptance Meetings. Verizon DC conducts quality inspections for collocation arrangements through a pre-acceptance checklist, conducts testing at a cross-connect bay, and performs voluntary cooperative testing for physical collocation. Verizon DC also provides all pertinent collocation information in its CLEC handbook and on its website."

Rates and charges for collocation arrangements were addressed in the Commission's Order No. 11979 in Formal Case No. 962. With the exception of CRTEE and Dedicated Transport Service ("DTS"), Verizon DC and several CLECs such as AT&T, Worldcom, and Sprint, agreed upon all rates and charges.[67] On December 3, 2002 and December 12,2002, the Commission released Orders Nos. 12608 and 12614, respectively, approving Verizon DC's collocation tariff filing, which included rates, charges, and other terms and conditions.[68] Verizon DC's collocation tariff became effective on December 20, 2002.[69]

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63 Verizon DC Checklist Declaration at ¶ 48.

64 Verizon DC Checklist Declaration at ¶¶60-61

65 Verizon DC Checklist Declaration at ¶¶70-71

66 Verizon DC Checklist Declaration at ¶¶ 78-79

67 Verizon DC Checklist Declaration at ¶ 90.

68 ***Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996,*** Order No. 12608, rel. December 3, 2002; Order No. 12614, rel. December 12, 2002. Verizon DC's collocation tariff becomes effective upon publication in the ***D.C. Register.***

4. Analysis and Conclusions

Verizon DC has presented evidence generally demonstrating its provision of required interconnection and collocation facilities and services. Verizon DC's evidence shows that it is providing the usual facilities and services in substantial quantities to CLECs, that it is providing them under arrangements similar *to* those implicitly accepted by the FCC through its Section 271 approvals in neighboring states, and that it is providing them in general accord with applicable quality of service requirements. The CLECs and OPC do not present substantial evidence challenging the types and levels of service provided by Verizon DC in connection with this checklist item. Therefore, in the absence of material, specific defects in Verizon DC's offerings and performance with respect to interconnection and collocation, this Commission finds that Verizon DC has demonstrated compliance with this checklist item, pursuant to the requirements of Section 271(c)(2)(B)(i).

Although the Commission generally finds that Verizon DC has met the requirements to satisfy Item 1 of the Checklist, the parties have raised several specific issues of concern that require further discussion by this Commission. These issues are addressed below.

B. Return of Collocation Space

1. AT&T

AT&T states that Verizon DC does not have a proper policy or procedure to address the return of collocation space.[70] Verizon DC's tariff provides that when a CLEC has returned a collocation space to Verizon DC, any other CLEC can use this space at a prorated price. Since the original CLEC paid for the construction, it receives a credit from Verizon DC. In its declaration, AT&T states that an extremely small number of the collocation arrangements returned to Verizon DC have produced reuse arrangements. It is unclear what types of collocation arrangements have been reused. AT&T states that Verizon DC does not offer or advertise reusable collocation space to potential collocators, even though virtually all of Verizon DC's central offices have reusable collocation space available. Verizon DC has not provided information regarding reusable space to the CLECs according to AT&T, even upon request, nor is there a process in place to track returned space. AT&T suggests that the Commission require Verizon DC to provide this information periodically to CLECs.

2. Verizon DC Reply

With respect to AT&T's argument about the return of collocation space, Verizon DC states that it has been working with AT&T to resolve these complex refund calculation issues."

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69 ***See,*** 49 *D.C. Reg.* **11449 (December** 20,2002.)

70 AT&T **Checklist Declaration** at ¶¶ 40-45.

71 **Verizon DC Reply Checklist Declaration at** ¶ 19

Verizon DC also points out that AT&T had an opportunity to raise this issue during the Commission's recent review of Verizon DC's collocation tariff application, but AT&T failed to file any comments. AT&T has received two notification letters of credits that it is due according to Verizon DC,[72] which state that, "[o]n a going forward basis, Verizon DC indicates that it will issue notification letters to the vacating CLEC when space has been reassigned and occupied by a subsequent collocator or reused by Verizon DC. In addition, Verizon DC has offered to issue the vacating CLEC credits within a specified time frame upon receipt of payment from the subsequent collocator."[73]

Verizon DC maintains that it has provided AT&T with a list of returned space (Attachment 213 to the Verizon DC Reply Checklist Declaration is Verizon's November 29, 2001 response to AT&T's inquiry on returned space), and that AT&T already has the ability to track this information itself, because Verizon DC halts monthly billing for returned space after its return is accepted.[74] Verizon DC states that it does not have an obligation to actively advertise this space, nor should it have to devote extensive resources to maintain and post returned space information that would be subject to continuous change.[75]

Verizon DC says that it makes collocation space availability known in accordance with state and federal requirements on its website, which it updates within 10 days after determining that new space is available. The Company contends that it would be burdensome and of little practical value to require it to add an indicator of returned space to its publicly available information. Verizon DC considers it more appropriate for those CLECs who have returned space to communicate its availability to other CLECs. Verizon DC also testified that it can not determine any discount or reduced price for returned space, because collocation costs are subject to so many other important variables.[76]

3. Analysis and Conclusions

When CLECs no longer have a use for collocation space at Verizon DC facilities, they may return control of that space to Verizon DC. However, collocation space is often expensive to prepare. CLECs must pay the costs of that preparation as well as for occupying the space. Those payments may take place over time. Verizon DC is entitled to recover its costs when CLECs vacate collocation space before completing payments associated with it. However, a subsequent CLEC may take over the space, in which case, the parties seem to agree that the new CLEC will pick up a fair share of the payments to which the first CLEC was obligated.

AT&T contends that very little of the collocation space being returned eventually produces offsetting payments to the first CLEC due to occupancy of the second CLEC. AT&T

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72 Veriron DC Reply Checklist Declaration at ¶ *20*

73 Veriron DC Reply Checklist Declaration at ¶ 21

74 Verizon DC Reply Checklist Declaration at ¶22

75 Verizon DC Reply Checklist Declaration at ¶¶ 22-23

16 Verizon DC Reply Checklist Declaration at ¶24.